

Whistleblower Directive: implementation of technical aspects to date

Survey of countries in CEE/SEE

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New obligations imposed on companies of 50 employees or more

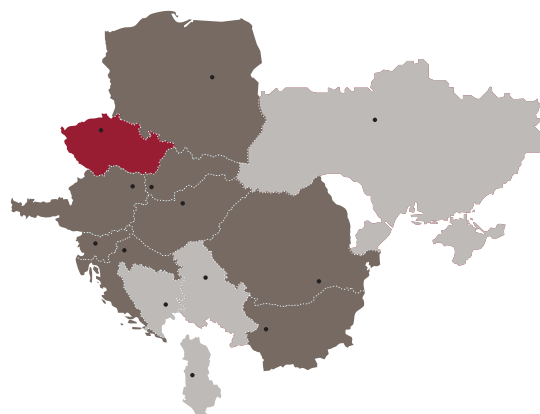
- The EU Directive 2019/1937 on the protection of persons who report breaches of Union law (the “**Whistleblowing Directive**”) entered into force in December 2019. All Member States are required to transpose the Whistleblowing Directive into national law and to bring such national legislation into force by 17 December 2021, when the two-year transitional period ends.
- The Whistleblowing Directive imposes **special obligations with which companies must comply** to protect the rights of whistleblowers. The Directive offers protection to a broad range of individuals, including not only employees who report their concerns, but also to former employees, shareholders, contractors and suppliers, those who provide support to the whistleblower, and job applicants.

The whistleblower can choose whether to report a concern internally within the company or directly to the competent supervisory authority. In this respect, the Directive requires **companies with more than 50 employees** to implement specific internal reporting channels to ensure that the whistleblower’s identity is kept confidential. Furthermore, companies must protect against any form of retaliation against whistleblowers and related persons.

Countries will take varying approaches to key provisions of the Directive

- **Most countries in CEE/SEE have not yet published a draft bill**, which means that for many of them, it will be difficult making the December 2021 deadline.
- **Existing designated legislation already exists** in Croatia, Hungary and Slovakia meaning they have experience implementing specific laws on whistleblowing, even though **they have not yet issued draft laws implementing the Directive**. Some of the remaining countries have existing partial protections for whistleblowers through other laws.
- **Two jurisdictions in the CEE/SEE countries covered in this survey have published draft bills implementing the Directive**, the Czech Republic and Romania, and the key features are covered in this update. Although both legislative proposals are based on the Whistleblowing Directive, certain differences are apparent. Unlike the Czech Republic, Romania does not allow anonymous reporting by whistleblowers. By contrast, the Czech Republic is considering making it a requirement for companies employing more than 25 employees to set up a reporting channel, which is a stricter requirement than that which is stipulated in the Directive.
- Although it may not yet appear that time is running out, **the December 2021 deadline is fast approaching**. By that deadline, companies will be expected to have taken steps towards setting up a compliance management system and updating it accordingly, which can be challenging when most countries still do not have the relevant legislation in place.

CEE/SEE countries with draft bills implementing the Directive



Czech Republic

Current implementation status

The government's draft bill was put before deputies on 9 February 2021 and is currently in the government committee stage. The final version of the bill has not yet been approved.

Anonymous reporting permitted by whistleblowers?

Yes, the draft bill allows for anonymous reporting. Therefore, reporting lines must be adjusted accordingly.

Specific technical and organisation measures prescribed in addition to the Whistleblowing Directive?

Generally speaking, no. However, the entities that will be bound by the act must bear in mind that whistleblowing reports can be made orally, in writing or in person. In the case of oral reports, the person responsible for the whistleblowing system will – with the whistleblower's consent – make a recording or transcript of his/her statement. Otherwise, the person responsible must document the whistleblower's statement in writing.

Special rules established regarding the reporting of breaches of laws/rules by the whistleblower compared to the Whistleblowing Directive?

This legislative bill proposes, among other things, that the obligation to establish a special reporting system should apply to companies employing more than 25 employees - which is stricter than what is required by the Whistleblowing Directive.

However, discussions are ongoing as to whether to bring the minimum number of employees into line with the Whistleblowing Directive (i.e. it would apply to companies employing at least 50 employees, and companies smaller than this threshold would be exempt).

Of particular note

The draft bill allows whistleblowers who are bound by a duty of confidentiality either on a statutory or contractual basis to breach their duty if they have legitimate reason to believe that the whistleblowing report is necessary to bring to light an infringement under the Whistleblowing Act.

This exception will not apply to lawyers, notaries, courts and in healthcare. The main government authority will be the Ministry of Justice, which will also be authorised to receive whistleblowing reports and to monitor the extent to which entities bound by the Whistleblowing Act comply with their obligations arising from the act.



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CEE/SEE countries with draft bills implementing the Directive



Romania



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Current implementation status

The Romanian Ministry of Justice published the draft bill for the transposition of the Whistleblowing Directive on 5 March 2021. Public consultation on the new legislative proposal was open until 26 March 2021. This draft bill is expected to become a law by the end of 2021, in order to meet the transposition deadline of the Whistleblowing Directive.

Anonymous reporting permitted by whistleblowers?

No, the draft bill does not allow for anonymous reporting. The draft bill regulates the minimum information to be included in a whistleblowing report, respectively: name, surname and contact details of the whistleblower, professional context in which the information was obtained, description of the act which may constitute a violation of the law, as well as, where applicable, the evidence supporting the report, date and signature of the whistleblower.

Specific technical and organisation measures prescribed in addition to the Whistleblowing Directive?

No. The whistleblower can report orally (i.e. by phone/using a voicemail system, in the presence of a designated person), or in writing (i.e. on paper, by sending the report to an indicated address, or by sending an e-mail to a dedicated e-mail address). The entities subject to the law must ensure that at least one means of reporting is always accessible to their staff.

When the report is made orally, the designated person has the right to record or make a transcript of the conversation, or document the oral reporting, as may be the case, based on the whistleblower's consent. If the whistleblower does not agree to the recording or transcrip-

tion of the oral reporting, the respective whistleblower is directed to report in writing.

Special rules established regarding the reporting of breaches of laws/rules by the whistleblower compared to the Whistleblowing Directive?

The draft bill regulates the cases when the whistleblowing report can be dismissed without any further assessment, namely:

- In the case of anonymous reporting;
- If the whistleblowing report does not contain the mandatory information under the law, provided that the designated person has requested the completion of missing information within 10 days, and the whistleblower has failed to meet such request;
- If the whistleblower makes several reports about the same issue, they are combined, and the whistleblower receives one single report in this respect. After that, if the respective whistleblower submits a new report about the same issue, without presenting additional information justifying a different subsequent action - the latest report will be dismissed.

Public authorities and institutions, as well as legal entities in the private sector are bound to keep the whistleblowing reports for a period of 5 years.

Of particular note

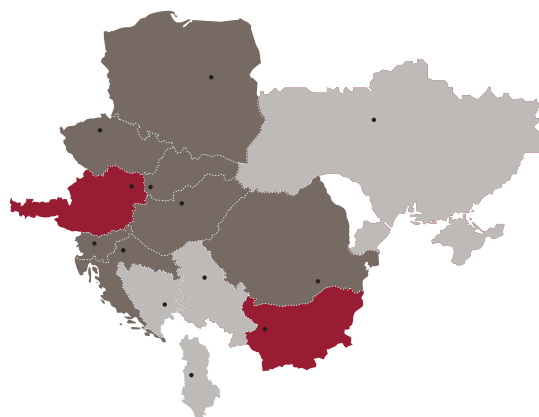
The draft bill provides for a broader material scope than the one under the Whistleblowing Directive. Whistleblowers may report on any breach of the law occurring within an organisation, including the non-observance of deontological rules.

Further analysis on the draft bill and the current situation in Romania is available [here](#).



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Current status of implementation in other CEE/SEE countries



Austria



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No draft bill to implement the Whistleblowing Directive has been published so far. Austria does not currently have a designated whistleblowing law.

In this context, however, Section 53a of the Civil Servants (Employment) Act (*BDG - 1973*) stipulates protection against discrimination for civil servants in the case of any (mandatory) reporting of criminal acts within the public administration. Additionally, there are several other sector-specific whistleblowing provisions (e.g. for the banking and financial services sector).



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Bulgaria

Implementation is in the preliminary states - an expert group within the Ministry of Justice has been formed to prepare a draft bill implementing the Whistleblowing Directive on the local level. Once ready, the draft bill will be announced for public discussion and afterwards – for voting in the Parliament. Recently, Bulgaria was in the rounds of the election of a new Government which further delayed the implementation process.



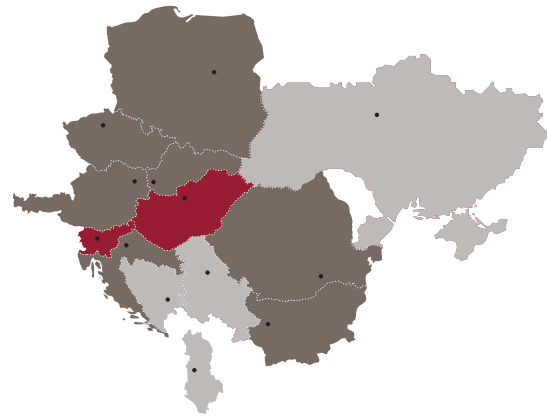
Bisera
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Bulgaria does not currently have a designated whistleblowing law. Various whistleblowing rules exist in several sector specific laws (e.g. AML, anti-corruption, financial laws, etc.).

Further analysis about the situation of anonymous reporting in Bulgaria is available [here](#).



Current status of implementation in other CEE/SEE countries



Croatia*



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The Croatian Government has taken only the preliminary steps to implement the Directive: the appointed work group for the draft bill is currently commencing preliminary meetings.

There is no additional information available, nor updates about the implementation process. However, Croatia has existing whistleblowing legislation in the form of the 2019 Law on the Protection of Persons reporting irregularities.

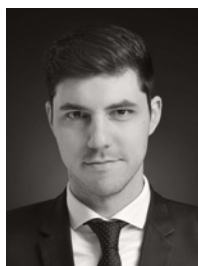
Hungary*



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Although Hungary has been protecting whistleblowers in a dedicated law since 2014 (through Act CLXV of 2013 on complaints and notifications of public interest), the lawmaker has not proposed any draft bill with the intention of implementing changes and amendments to the current legislation required under the Whistleblowing Directive.



Péter
Ihász

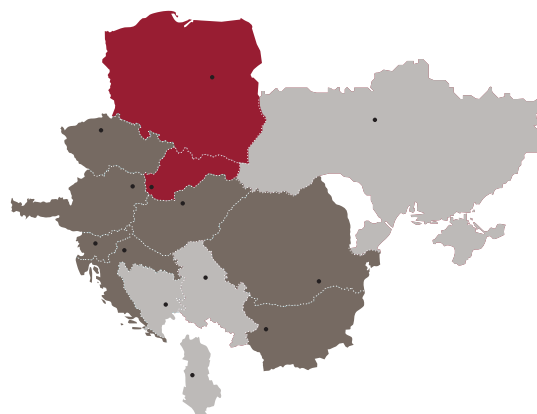
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Further information on the existing legislation in Hungary and lessons learned through its implementation are available [here](#).



* Indicates existing designated whistleblowing legislation

Current status of implementation in other CEE/SEE countries



Poland



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Only preliminary steps have been taken to implement the Directive – the responsibility for drafting the bill transferred by the PM lies with the Minister for Development, Labour and Technology. The bill is not yet finalised, and it is not publicly available yet.

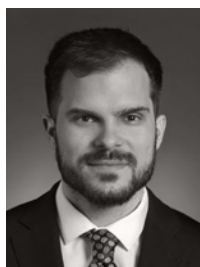
Poland does not currently have a designated whistleblowing law. Some non-designated laws contain provisions regarding whistleblowing in relation to the respective matters regulated by each statute. These include provisions of Banking Law, AML Law, and the Law on Combating Unfair Competition.



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* Indicates existing designated whistleblowing legislation

Slovakia*



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The legislative process implementing the Whistleblowing Directive into the Slovak legal system has not commenced yet. Based on our informal communication with the Government Office, the draft law is likely to be prepared by September 2021.

However, the Slovak legal system already has in place a relatively comprehensive framework for protection of “whistleblowers” under the Slovak Whistleblowing Act.

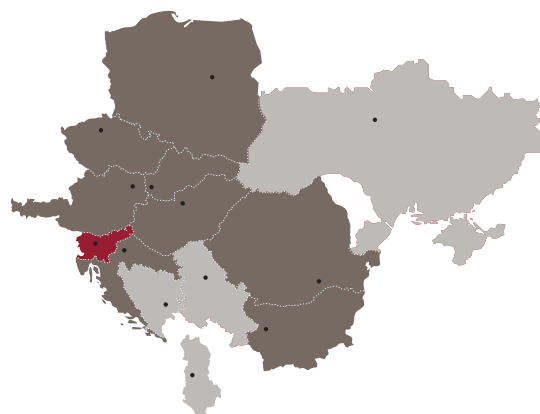


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Current status of implementation in other CEE/SEE countries



Slovenia



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Only preliminary steps have been taken. The Ministry of Justice is responsible for preparing the draft act implementing the Whistleblowing Directive. The draft act is in the drafting process, and it is likely to be published in September 2021. Slovenia does not have designated whistleblowing legislation.

The protection of whistle-blowers is currently regulated in a rather fragmented manner; individual provisions can be found in several sectoral laws (such as the Criminal Code, the Market in Financial Instruments Act, the Banking Act, etc). However, the Integrity and Prevention of Corruption Act contains a relatively extensive section on whistleblowers.

The protections provided in the foregoing act include the protection against disclosure of the identity of a whistleblower who reports corrupt conduct to the Prevention of Corruption Commission ("**Commission**").

Furthermore, any public official deeming that he/she is required to engage in illegal or unethical conduct or is subjected to psychological or physical violence for that purpose can submit a report to his/her superior/the Commission. Lastly, the Commission provides protection against retaliation measures to any whistleblower.

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